

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JIMMY NEGRON, as Trustee of the Rose
Irizarry 2008 Life Insurance Trust,

Plaintiff,

v.

LINCOLN NATIONAL LIFE INSURANCE
COMPANY,

Defendant.

And

LINCOLN NATIONAL LIFE INSURANCE
COMPANY,

Third-Party Plaintiff,

v.

MATTHEW FISCHER, THE ESTATE OF
ROSE IRIZARRY, JACOB WEINDLING,
LIBERTY PLANNING, INC., THE
ROCKLYN GROUP, LTD. AND
CHAIM MAYER LEBOVITS,

Third Party Defendants.

Docket No. 11-cv-00363 (NGG)(RML)

**ANSWER OF THIRD-PARTY DEFENDANT JACOB WEINDLING TO
THE THIRD-PARTY COMPLAINT OF LINCOLN NATIONAL LIFE INS. CO.**

Third-party defendant Jacob Weindling ("Defendant"), by his undersigned attorneys, for his Answer and affirmative defenses to the Third-Party Complaint (the "Complaint") filed by third-party plaintiff Lincoln National Life Insurance Company ("Lincoln"), hereby admits, denies and alleges as follows:

PARTIES

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Admits that Defendant is a licenced insurance agent and that Defendant resides at the address contained in paragraph 6 of the Complaint, but denies the remainder of the allegations contained in paragraph 6 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

JURISDICTION

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint contains legal assertions to which no responsive pleading is required.

13. Paragraph 13 of the Complaint contains legal assertions to which no responsive pleading is required.

BACKGROUND

STRANGER-ORIGINATED LIFE INSURANCE

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Denies the allegations contained in paragraph 16 of the Complaint.

17. Denies the allegations contained in paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. Denies the allegations contained in paragraph 20 of the Complaint and refers to the referenced document, which speaks for itself.

21. Denies the allegations contained in paragraph 21 of the Complaint and refers to the referenced document, which speaks for itself.

FACTUAL ALLEGATIONS

22. Denies the allegations contained in paragraph 22 of the Complaint and refers to the referenced document, which speaks for itself.

23. Denies the allegations contained in paragraph 23 of the Complaint and refers to the referenced document, which speaks for itself.

24. Denies the allegations contained in paragraph 24 of the Complaint as it relates to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the remaining defendants.

25. Denies the allegations contained in paragraph 25 of the Complaint as it relates to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the remaining defendants.

26. Denies the allegations contained in paragraph 26 of the Complaint as it relates to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the remaining defendants.

27. Denies the allegations contained in paragraph 27 of the Complaint and refers to the referenced document, which speaks for itself.

28. Denies the allegations contained in paragraph 28 of the Complaint and refers to the referenced document, which speaks for itself.

29. Denies the allegations contained in paragraph 29 of the Complaint and refers to the referenced document, which speaks for itself.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. Denies the allegations contained in paragraph 31 of the Complaint and refers to the referenced document, which speaks for itself.

32. Denies the allegations contained in paragraph 32 of the Complaint and refers to the referenced document, which speaks for itself.

33. Denies the allegations contained in paragraph 33 of the Complaint and refers to the referenced document, which speaks for itself.

34. Denies the allegations contained in paragraph 34 of the Complaint and refers to the referenced document, which speaks for itself.

35. Denies the allegations contained in paragraph 35 of the Complaint and refers to the referenced document, which speaks for itself.

36. Denies the allegations contained in paragraph 36 of the Complaint and refers to the referenced document, which speaks for itself.

37. Denies the allegations contained in paragraph 37 of the Complaint and refers to the referenced document, which speaks for itself.

38. Denies the allegations contained in paragraph 38 of the Complaint and refers to the referenced document, which speaks for itself.

39. Denies the allegations contained in paragraph 39 of the Complaint and refers to the referenced document, which speaks for itself.

40. Denies the allegations contained in paragraph 40 of the Complaint and refers to the referenced document, which speaks for itself.

41. Denies the allegations contained in paragraph 41 of the Complaint and refers to the referenced document, which speaks for itself.

42. Denies the allegations contained in paragraph 42 of the Complaint and refers to the referenced document, which speaks for itself.

43. Denies the allegations contained in paragraph 43 of the Complaint and refers to the referenced document, which speaks for itself.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint.

45. Denies the allegations contained in paragraph 45 of the Complaint as it relates to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the remaining defendants.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint.

48. Denies the allegations contained in paragraph 48 of the Complaint and refers to the referenced document, which speaks for itself.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint.

53. Denies the allegations contained in paragraph 53 of the Complaint.

54. Denies the allegations contained in paragraph 54 of the Complaint.

55. Denies the allegations contained in paragraph 55 of the Complaint and refers to the referenced document, which speaks for itself.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. Denies the allegations contained in paragraph 57 of the Complaint and refers to the referenced document, which speaks for itself.

58. Denies the allegations contained in paragraph 58 of the Complaint.

Death Claim and Contestable Claim Investigation

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Complaint.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint.

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint.

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint.

77. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint.

79. Denies the allegations contained in paragraph 79 of the Complaint as it relates to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to the remaining defendants.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint.

81. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint.

83. Denies the allegations contained in paragraph 83 of the Complaint.

84. Denies the allegations contained in paragraph 84 of the Complaint.

85. Denies the allegations contained in paragraph 85 of the Complaint.

86. Denies the allegations contained in paragraph 86 of the Complaint.

87. Denies the allegations contained in paragraph 87 of the Complaint.

88. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint.

89. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint.

92. Denies the allegations contained in paragraph 92 of the Complaint.

93. Denies the allegations contained in paragraph 93 of the Complaint.

94. Denies the allegations contained in paragraph 94 of the Complaint.

95. Denies the allegations contained in paragraph 95 of the Complaint.

96. Denies the allegations contained in paragraph 96 of the Complaint.

97. Denies the allegations contained in paragraph 97 of the Complaint.

98. Denies the allegations contained in paragraph 98 of the Complaint.

99. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Complaint.

100. Denies the allegations contained in paragraph 100 of the Complaint, except admits that in its Complaint, Lincoln seeks the court's direction as requested therein.

FIRST COUNT

101. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

102. Denies the allegations contained in paragraph 102 of the Complaint.

103. Denies the allegations contained in paragraph 103 of the Complaint.

104. Denies the allegations contained in paragraph 104 of the Complaint.

105. Denies the allegations contained in paragraph 105 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

SECOND COUNT

106. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the Complaint.

108. Denies the allegations contained in paragraph 108 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

THIRD COUNT

109. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

110. Denies the allegations contained in paragraph 110 of the Complaint.

111. Denies the allegations contained in paragraph 111 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs,

disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

FOURTH COUNT

112. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

113. Denies the allegations contained in paragraph 113 of the Complaint.

114. Denies the allegations contained in paragraph 114 of the Complaint.

115. Denies the allegations contained in paragraph 115 of the Complaint.

116. Denies the allegations contained in paragraph 116 of the Complaint.

117. Denies the allegations contained in paragraph 117 of the Complaint.

118. Denies the allegations contained in paragraph 118 of the Complaint.

119. Denies the allegations contained in paragraph 119 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

FIFTH COUNT

120. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

121. Denies the allegations contained in paragraph 121 of the Complaint.

122. Denies the allegations contained in paragraph 122 of the Complaint.

123. Denies the allegations contained in paragraph 123 of the Complaint.

124. Denies the allegations contained in paragraph 124 of the Complaint.

125. Denies the allegations contained in paragraph 125 of the Complaint.

126. Denies the allegations contained in paragraph 126 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

SIXTH COUNT

127. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

128. Denies the allegations contained in paragraph 128 of the Complaint.

129. Denies the allegations contained in paragraph 129 of the Complaint.

130. Denies the allegations contained in paragraph 130 of the Complaint.

131. Denies the allegations contained in paragraph 131 of the Complaint.

132. Denies the allegations contained in paragraph 132 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

SEVENTH COUNT

133. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

134. Admits that Defendant is a licensed insurance agent, denies the remainder of the allegation as it pertains to Defendant, and denies knowledge or information sufficient to form a belief as to the truth of the allegation as it relates to the remaining defendants.

135. Denies the allegations contained in paragraph 135 of the Complaint.

136. Denies the allegations contained in paragraph 136 of the Complaint.

137. Denies the allegations contained in paragraph 137 of the Complaint.

138. Denies the allegations contained in paragraph 138 of the Complaint.

139. Denies the allegations contained in paragraph 139 of the Complaint.

140. Denies the allegations contained in paragraph 140 of the Complaint.

141. Denies the allegations contained in paragraph 141 of the Complaint.

142. Denies the allegations contained in paragraph 142 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

EIGHTH COUNT

143. Defendant incorporates by reference each and every answer contained in the preceding paragraphs as if set forth at length herein.

144. Denies the allegations contained in paragraph 144 of the Complaint.

145. Denies the allegations contained in paragraph 145 of the Complaint.

146. Denies the allegations contained in paragraph 146 of the Complaint.

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to plead fraud with particularity as required by Fed. R. Civ. P. 9(b).

THIRD AFFIRMATIVE DEFENSE

To the extent that Lincoln relies on any alleged representations or misrepresentations in any materials not attached to the Policy as issued, such statements may not be relied on to support any of the allegations in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Defendant did not make any misrepresentations to Lincoln, and/or any such misrepresentation was not material and/or was not relied upon by Lincoln.

FIFTH AFFIRMATIVE DEFENSE

To the extent that Lincoln relies on any alleged representations and misrepresentations made to its agents or employees by any parties, these representations and/or misrepresentations were and are not material to the risk insured under the Policy, the underwriting and issuance of the Policy, or the premiums as charged and calculated.

SIXTH AFFIRMATIVE DEFENSE

Lincoln was aware of all of the facts surrounding the Policy and the insured and therefore has waived any alleged basis to prosecute the claims set forth herein.

SEVENTH AFFIRMATIVE DEFENSE

Lincoln could have made itself aware of all of the facts surrounding the Policy and the insured and therefore has waived any alleged basis to prosecute the claims set forth herein.

EIGHTH AFFIRMATIVE DEFENSE

Lincoln was aware of all of the facts surrounding the Policy and the insured and therefore is estopped from prosecuting the claims set forth herein.

NINTH AFFIRMATIVE DEFENSE

Lincoln could have made itself aware of all of the facts surrounding the Policy and the insured and therefore is estopped from prosecuting the claims set forth herein.

TENTH AFFIRMATIVE DEFENSE

Lincoln failed to refund the premium and therefore is barred from prosecuting the claims set forth herein.

ELEVENTH AFFIRMATIVE DEFENSE

Lincoln continued to solicit and accept premium payments after learning of the facts giving rise to its claims and otherwise continued to treat the Policy as if it was in full force and effect and, accordingly, is precluded from prosecuting the claims set forth herein.

TWELFTH AFFIRMATIVE DEFENSE

Lincoln's claims are barred under the doctrine of "unclean hands."

THIRTEENTH AFFIRMATIVE DEFENSE

Lincoln's claims are barred under the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

Lincoln's claims are barred under the doctrines of estoppel, waiver and ratification.

FIFTEENTH AFFIRMATIVE DEFENSE

Lincoln's claims are barred under the applicable statutes of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

Lincoln's claims are barred, in whole or in part, by their acquiescence.

SEVENTEENTH AFFIRMATIVE DEFENSE

Lincoln has failed, in whole or in part, to mitigate and/or avoid its alleged damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

If Lincoln has suffered any injury, which is specifically denied, such injury was caused or contributed to by the acts of Lincoln and/or third parties.

NINETEENTH AFFIRMATIVE DEFENSE

Lincoln is not entitled to any relief from Defendant because it has not suffered or incurred any damages as a result of any conduct by Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

Lincoln's causes of action are barred because Defendant did not derive any benefit from the transactions referred to in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Lincoln's claims are barred because Defendant does not maintain a special relationship with Lincoln and/or did not owe any duties to Lincoln.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent Lincoln's claims rest on alleged contractual obligations, no such contractual obligations exist, and/or Lincoln is not in privity of contract with Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Lincoln's causes of action are barred because Lincoln failed to perform conditions precedent required by any alleged contract.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant has no contractual or other liability to Lincoln.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Any and all liability of Defendant is cut off by the intervening and/or supervening conduct of others.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Lincoln has failed to join one or more parties required to be joined and such failure prejudices Defendant and could create a substantial risk of inadequate, multiple, or inconsistent judgments.

JURY DEMAND

Defendant hereby demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Defendant Jacob Weindling respectfully requests that this Court enter a judgment dismissing Lincoln's Complaint with prejudice, awarding Jacob Weindling costs, disbursements and attorneys' fees incurred in connection with this action, and for such other, further, and different relief as the Court deems just and proper.

Dated: Brooklyn, New York
May 31, 2011

TREFF & LOWY PLLC

By: 

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